



**FILED**

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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation to Consider  
Policies to Achieve the Commission's  
Conservation Objectives for Class A Water  
Utilities.

Investigation 07-01-022  
(Filed January 11, 2007)

And Related Matters.

Application 06-09-006  
(Filed September 6, 2006)  
Application 06-10-026  
(Filed October 23, 2006)  
Application 06-11-009  
(Filed November 20, 2006)  
Application 06-11-010  
(Filed November 22, 2006)  
Application 07-03-019  
(Filed March 19, 2007)

**ADMINISTRATIVE LAW JUDGE'S RULING  
DENYING HEARINGS ON THE SAN JOSE WATER COMPANY SETTLEMENT  
AND GRANTING IN PART THE CONSUMER FEDERATION  
OF CALIFORNIA'S MOTION FOR LEAVE TO FILE CORRECTIONS**

This ruling denies hearings on the settlement agreement on conservation rate design and water revenue adjustment mechanism (WRAM) between San Jose Water Company (San Jose) and the Division of Ratepayer Advocates (DRA). This ruling also grants in part the motion of the Consumer Federation of California (CFC) for leave to file corrections to its comments on the settlement agreement for the limited purpose of correcting CFC's analysis of the settlement based on a misunderstanding of a document obtained during discovery.

## **Background**

The Commission opened this investigation to address policies to achieve its conservation objectives for Class A water utilities. San Jose's conservation rate design application was consolidated with this investigation. On November 14, 2007, San Jose and DRA filed their settlement agreement proposing a trial program, which includes increasing block rates and a pricing adjustment mechanism (a Monterey-style WRAM).

CFC and the Joint Consumers (Disability Rights Advocates, Latino Issues Forum, National Consumer Law Center, and The Utility Reform Network) filed comments on the settlement on December 13 and 14, 2007, respectively. CFC opposes implementation of the settlement and proposes an alternate rate design. The Joint Consumers do not oppose the settlement but request that the Commission adopt aggressive customer outreach and education efforts and data collection measures for San Jose to ensure customers are informed and the impact of the conservation rate design is monitored, particularly for low-income customers. The Joint Consumers' proposals are comparable to those made in Phase 1A.

By a December 26, 2007 ruling, I ordered CFC, DRA, and San Jose to meet and confer and to file a stipulation of facts and statement of contested facts to assist in determining whether hearings on the settlement and alternate rate design were necessary. On January 18, 2008, San Jose and DRA filed reply comments on the Joint Consumers' and CFC's comments.<sup>1</sup> Phase 1B was submitted on the filing of reply briefs on February 6, 2008. San Jose and DRA

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<sup>1</sup> San Jose noted it was continuing settlement negotiations with the Joint Consumers. However, no settlement was filed before Phase 1B was submitted.

noted many of CFC's arguments in opposition to the settlement were similar to those contained in its oppositions to the other Phases 1A and 1B settlements. San Jose and DRA stated that CFC's proposed rate design contained serious flaws, including an overcharge to ratepayers of \$50,495,049 on the quantity revenue target of \$77,085,459.

The parties were unable to reach a stipulation. On February 6, 2008, CFC submitted a stipulation of facts and issues. In a conference call with CFC, San Jose, and DRA on February 8, 2008, I confirmed that San Jose and DRA did not concur in the stipulation. I told CFC that its proposed "stipulation" would not be filed; however, CFC retained the option to re-title the document and seek leave to file it. On February 11, 2008, CFC filed a motion for leave to file corrections to its comments on the settlement and attached the proposed corrected comments. On February 26, 2008, San Jose and DRA filed a response to the motion; on March 4, 2008, CFC filed a reply to San Jose and DRA's response.

## **Discussion**

Rule 12.3 of the Commission's Rules of Practice and Procedure (Rules) provides that if there are no material contested issues of fact, or if the contested issue is one of law, the Commission may decline to set a hearing on a contested settlement. As discussed below, there are no material issues of fact that must be resolved in hearings and CFC's motion for leave to file corrections should be granted in part to permit corrections to CFC's comments on the settlement.

CFC proposes a different rate design in its motion for leave to file its corrected comments. CFC's corrections to its alternate rate design would change the proposed breakpoint between the second and third tiers and would change the proposed rates for all tiers. San Jose and DRA accurately characterize CFC's

corrections to its alternate rate design as an amendment. Under Rule 1.12(a), the Commission defines an amendment as a document that makes a substantive change to a previously filed document. To make substantive changes to its analysis and alternate rate design, CFC would have to request leave to file an amendment to substitute its new analysis and alternate rate design. Since Phase 1B is submitted, CFC also would have to seek leave to set aside submission to consider the revised alternate rate design. Since CFC did not seek leave to amend its comments, I cannot grant CFC that relief. CFC's request to correct its alternate rate design is denied.

CFC states its corrections are based on CFC's misunderstanding of a document with a heading "Water Customers' Consumption Analysis for the Twelve Months Ended December 31, 2006" and the grouping of data for residential customers bi-monthly. CFC understood that this document contained bi-monthly rather than annual data. CFC used the annual consumption data to correct its comments on the settlement on pages 13, 16, and 17. San Jose and DRA neither disputed CFC's consumption analysis on pages 13, 16, and 17 of CFC's comments nor discussed the corrected data on those pages. To permit CFC to correct its consumption analysis of the settlement will further the Commission's review of the settlement. CFC's request to correct its analysis of the settlement is granted.

No factual disputes arise with respect to the concerns raised by the Joint Consumers. In addition, Decision (D.) 08-02-036, the Phase 1A decision, addresses the issues on customer education and outreach and data collection and reporting raised by the Joint Consumers. The settlement and the Joint

Consumers' comments are sufficient to address these issues.<sup>2</sup> I decline to order hearings to address CFC's alternate rate design. The parties concur that CFC's original alternate rate design is flawed, so hearings on that rate design are not required under Rule 12.3. CFC did not file a timely motion to amend its comments on the settlement agreement, so no hearings are required on the revised rate design. Even if CFC had moved to amend its alternate rate design in conformance with its proposed corrections, it still is unlikely that CFC's new proposal would be viable and that hearings would be an efficient use of the parties' and the Commission's resources. San Jose and DRA state the corrected alternate rate design still is inconsistent with San Jose's adopted revenue requirement as it would undercollect that revenue requirement. CFC does not estimate Ccf sales in each proposed tier of its rate design, as do San Jose and DRA in Worksheet 1 attached to the proposed settlement agreement. In the settlement, San Jose and DRA illustrate how the proposed changes to the rate design are revenue neutral and consistent with the revenue requirement adopted for San Jose in D.06-11-015. CFC does not. The Commission will not entertain a rate design proposal that is inconsistent with the adopted revenue requirement. To do otherwise would be a collateral attack on a prior decision.

The remaining issues addressed by CFC are similar to issues CFC has raised on other settlement agreements. The Commission permitted four days of hearings on contested issues in Phase 1A and addressed CFC's request for cost allocation studies and different breakpoints between tiers. The Commission

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<sup>2</sup> If San Jose and the Joint Consumers reach a settlement on these issues and seek leave to set aside submission to address the settlement, the proposed settlement will be addressed by a separate ruling.

declined to order CFC's recommended changes in D.08-02-036. The settlement's decision to maintain the status quo for non-residential rates, since more than 70% of revenue is recovered through the quantity charge as required by the California Urban Water Conservation Council, is consistent with the Commission's determination of a reasonable non-residential rate design in D.08-02-036. The settlement agreement and the comments on the settlement are sufficient to determine whether CFC's challenges to the San Jose settlement require a different result. Duplicative hearings would not be an efficient use of the parties' and the Commission's resources.

**IT IS RULED that:**

1. The Commission shall review the DRA and San Jose settlement on WRAM and conservation rate design issues by considering the filed settlement and comments.
2. CFC's motion for leave to file corrections to comments on the settlement agreement between DRA and San Jose on WRAM and conservation rate design issues is granted in part and is otherwise denied, as set forth herein.

Dated March 7, 2008, at San Francisco, California.

/s/ JANICE GRAU  
Janice Grau  
Administrative Law Judge

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Dated March 7, 2008, at San Francisco, California.

/s/ KE HUANG

Ke Huang

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